IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16739 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI KISHANBHAI KHETALIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16739 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MR LR PUJARI Ld,. AGP for Respondents

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 05/02/2004

ORAL JUDGEMENT

1. Heard Ms.S.G.Patel, learned advocate for the petitioner and Mr.L.R.Pujari, learned AGP for the

respondent no.3.

2. By this petition under Article 226 of the Constitution of India, the petitioner has been praying for quashing and setting aside of the detention order dated 19.6.2003 issued by respondent no.2 and a direction to the respondents to set the petitioner-detenu at liberty forthwith.

3. The impugned detention order dated 19.6.2003 (Annexure-A) was executed on 20.6.2003. It is suggested from the grounds of detention (Annexure-B) that as many as 5 cases under Indian Penal Code, alleging offences under Section 457, 380 and 114, came to be registered against the petitioner as well as his associates.

4. It is submitted by Ms.S.G.Patel, learned advocate for the petitioner that a co-detenu, who was stated to be the associate of the present petitioner, has been set at liberty by this Court by setting aside the detention order passed against him. The copy of the order dated 17.10.2003 passed in Special Civil Application No.11106 of 2003 by the learned Single Judge of this Court has been placed on record. The petitioner of Special Civil Application No.11106 of 2003 has been referred to on Page-4 of Annexure-B and has been stated to be the associate of the present petitioner. By the reason of parity when the same grounds were pressed into service for the detention of the associate of the present petitioner, the present petitioner is required to be set at liberty by quashing and setting aside the impugned detention order passed against him by respondent no.2.

In addition to what has been observed, it may also be seen that the grounds referrs to the registration of five cases against the present petitioner under the various provisions of the Indian Penal Code.

5. In the case of Ashokbhai Jivraj @ Jivabhai Solank Vs. Police Commissioner, Surat and Others, 2000 (1) GLR 816 wherein it has been held by the Division Bench of this Court that, "so far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "Law and Order" and not "Public Order". The subjective

satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "Public Order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case."

6. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 19.6.2003 (Annexure-A) passed by respondent no.2 against the petitioner -detenu -Babubhai Kishanbhai Khetaliya is hereby quashed and set aside. The petitioner -detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)